

REMARKS

The Office Action dated August 11, 2009 has been carefully considered and the following response prepared. Claims 39, 41, 42, 44 and 46 are pending in the application.

REJECTION UNDER 35 USC 112, FIRST PARAGRAPH

At page 2 of the Office Action, the Examiner rejected claims 39, 41-42, 44 and 46 under 35 USC 112, first paragraph as not enabled. The Examiner alleged that the specification, while being enabling for the treating of infection caused by bacteria and malaria, does not reasonably provide enablement for a method of treating infection caused by other infectious agents.

Applicants traverse this rejection. In order to advance prosecution, claims 39 and 46 have been amended to recite a method of treating malaria in an individual. Claims 41, 42 and 44 have been amended to correspond to the amendment to claim 39. No new matter has been added.

Amended claims 39, 41-42, 44 and 46 are directed to subject matter the Examiner indicated is enabled by the specification. Withdrawal of this section 112, first paragraph rejection is respectfully requested.

REJECTION UNDER 35 USC 102(b)

At page 7 of the Office Action, the Examiner rejected claims 39, 41-42, 44 and 46 under 35 USC 102(b) as anticipated by U.S. patent 4,206,156. The Examiner alleged that by administering the compounds in the '156 patent to a subject with microbial infection, the instantly recited limitation is met since the subject does not have to be infected by fungi, virus, parasites or malaria. The Examiner indicated that amendments to the claims to recite "a method of treating virus, fungal, or parasitic infection" would overcome the rejection.

Applicants traverse this rejection. Claims 39 and 46 have been amended to recite a method of treating malaria in an individual. Claims 41, 42 and 44 have been amended to correspond to the amendment to claim 39. No new matter has been added.

Claims 39, 41-42, 44 and 46 have been amended as suggested by the Examiner to overcome the rejection over the '156 patent. Withdrawal of this section 102(b) rejection is respectfully requested.

DOUBLE PATENTING REJECTION

At page 8 of the Office Action, The Examiner rejected claims 39, 41-42, 44 and 46 on the grounds of non-statutory obviousness-type double patenting over claims 1-14 of U.S. Patent 6,534,489 (the '489 patent). The Examiner alleged that, although the conflicting claims are not identical, they are not patentably distinct from each other because the '489 patent recites the compounds claimed in the present application and the method of using such compounds in treating infection caused by bacteria, virus, fungi and parasites.

Applicant again requests that this rejection be held until such time as notice of patentable subject matter has been received in the present application. Applicants will file an appropriate terminal disclaimer at that time if necessary.

In view of the above, the present application is believed to be in a condition ready for allowance. Reconsideration of the application is respectfully requested and an early Notice of Allowance is earnestly solicited.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 03-2775, under Order No. 14519-00003-US. A duplicate copy of this paper is enclosed.

Application No. 10/676,131

Docket No.: 14519-00003-US

Dated: February 9, 2010

Respectfully submitted,

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